



No. 71-119

In the Supreme Court of the United States

OCTOBER TERM, 1971

MIKE TRBOVICH, PETITIONER

v.

UNITED MINE WORKERS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECRETARY OF LABOR

ERWIN N. GRISWOLD,
Solicitor General,

L. PATRICK GRAY III,
Assistant Attorney General,

HARRY R. SACHSE,
Assistant to the Solicitor General,

WALTER H. FLEISCHER,

RAYMOND D. BATTOCCHI,

*Attorney,
Department of Justice,
Washington, D.C. 20530.*

RICHARD F. SCHUBERT,
Solicitor,

GEORGE T. AVERY,
Associate Solicitor,

BEATE BLOCH,
Attorney,

*Department of Labor,
Washington, D.C. 20216.*

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
1. The election and protest	2
2. The Secretary's investigation and subse-	
quent suit	4
3. The motion to intervene	9
4. Decisions and orders below	10
Summary of argument	11
Argument:	
I. The statutory scheme of the Act and this	
Court's decisions interpreting it are	
inconsistent with petitioner's claimed	
right of intervention, in this case	14
II. The legislative history of the Act is	
inconsistent with petitioner's claimed	
right of intervention, in this case	22
III. The Secretary's consistent interpretation	
of the statute should be followed unless	
there are compelling indications that	
it is wrong	31
IV. Federal Rule 24 does not authorize peti-	
tioner's intervention	32
Conclusion	39

CITATIONS

Cases:

<i>Acuff v. United Papermakers and Paperworkers</i> , 404 F. 2d 169, certiorari denied, 394 U.S. 987	Page 33
<i>Alleghany Corporation v. Kirby</i> , 344 F. 2d 571, certiorari granted, <i>sub. nom. Holt v. Allegheny Corp.</i> , 381 U.S. 933, certiorari dismissed, 384 U.S. 28	33
<i>Blankenship v. Boyle</i> , 329 F. Supp. 1089	8, 35
<i>Calhoon v. Harvey</i> , 379 U.S. 134	10, 15, 18, 32
<i>Cascade Natural Gas Corp. v. El Paso Natural Gas Co.</i> , 386 U.S. 129	37
<i>Hodgson v. Local 6799, United Steel Workers of America</i> , 403 U.S. 333	19
<i>International Union, UAW v. Scofield</i> , 382 U.S. 205	12, 19, 20
<i>Lupton Mfg. Co. v. United States</i> , 388 U.S. 457	37
<i>Martin v. Kalvar Corp.</i> , 411 F. 2d 552	33
<i>Red Lion Broadcasting Co. v. Federal Communications Commission</i> , 395 U.S. 367	31
<i>Shultz v. United Steelworkers of America</i> , District 15, 312 F. Supp. 1044	21, 22
<i>Shultz v. United Steelworkers of America</i> , District 19, 313 F. Supp. 549	21, 22
<i>Sibbach v. Wilson & Co.</i> , 312 U.S. 1	32
<i>Spangler v. Pasadena City Board of Education</i> , 427 F. 2d 1352, certiorari denied <i>sub nom. Alexander v. Pasadena City Board of Education</i> , 402 U.S. 943	38
<i>Stadin v. Union Electric Company</i> , 309 F. 2d 912	33
<i>Stein v. Wirtz</i> , 366 F. 2d 188, certiorari denied, 386 U.S. 996	21, 22
<i>Udall v. Tallman</i> , 380 U.S. 1	31

III

Cases—Continued

	Page
<i>United States v. Atlantic Richfield Company</i> , 50 F.R.D. 369, affirmed <i>sub nom. Bartlett</i> , <i>et al. v. United States</i> , 401 U.S. 986-----	38
<i>United States v. Automobile Manufacturers</i> <i>Ass'n</i> , 307 F. Supp. 617, affirmed <i>sub nom.</i> <i>City of New York v. United States, et al.</i> , 397 U.S. 248-----	37, 38
<i>United States v. Blue Chip Stamp Company</i> , 272 F. Supp. 432, affirmed <i>per curiam sub</i> <i>nom. Thrifty Shoppers Scrip Co. v. United</i> <i>States</i> , 389 U.S. 580-----	37, 38
<i>United States v. Boyle, et al.</i> , (D.D.C. Crim.) No. 346-71-----	11
<i>United States v. Harper & Row Publishers</i> , <i>Inc.</i> (N.D. Ill., E.D., November 27, 1967), affirmed <i>sub nom. City of New York v.</i> <i>United States</i> , 390 U.S. 715-----	37
<i>United States v. Paramount Pictures, Inc.</i> (S.D.N.Y. Eq. No. 87-273, March 22, 1971, affirmed <i>sub nom. Syufy Enterprises, Inc. v.</i> <i>United States</i> , No. 70-329, decided October 12, 1971-----	37
<i>United States v. Sherwood</i> , 312 U.S. 584-----	32
<i>United States v. Western Electric Co.</i> , 1968 CCH Trade Cases 72,415 (D.N.J.), affirmed <i>sub nom. Clark Walter and Sons, Inc. v.</i> <i>United States</i> , 392 U.S. 659-----	37
<i>Wirtz v. Hotel, Motel and Club Employees</i> <i>Union, Local 6</i> , 391 U.S. 492-----	19
<i>Wirtz v. Local Union No. 12, etc., Operating</i> <i>Engineers</i> , 66 LRRM 2080; 56 L.C. § 12,153 (C.D. Cal.)-----	22
<i>Wirtz v. Local Union No. 125, Laborers' Inter-</i> <i>national Union</i> , 389 U.S. 477-----	19, 34
<i>Wirtz v. Local 153, Glass Bottle Blowers Assn.</i> , 389 U.S. 462-----	14, 18, 19, 34

Cases—Continued

<i>Wirtz v. Local Union No. 1377</i> , 288 F. Supp. 914	Page 22
<i>Yablonski v. United Mine Workers</i> (D.D.C.) Civ. No. 3436-69	11

Statutes and rules:

Labor-Management Reporting and Disclosure
Act of 1959, 73 Stat. 519, 29 U.S.C. 401
et seq.:

Section 101(a)(1), 29 U.S.C. 411(a)(1)---	14
Section 102, 29 U.S.C. 412	15, 38
Section 201, 29 U.S.C. 431	10
Section 206, 29 U.S.C. 436	38
Section 208, 29 U.S.C. 438	15
Section 210, 29 U.S.C. 440	15, 38
Section 401, 29 U.S.C. 481	15
Section 401(c), 29 U.S.C. 481(c)	15, 23
Section 402, 29 U.S.C. 482	2, 16, 23, 32, 36
Section 402(a), 29 U.S.C. 482(a)	16, 36
Section 402(b), 29 U.S.C. 482(b)	16
Section 403, 29 U.S.C. 483	2, 16, 28
Section 403(a), 29 U.S.C. 483(a)	39

Federal Rules of Civil Procedure:

Rule 23(1)(c)	38
Rule 24	13, 32
Rule 24(a)	13, 32

Miscellaneous:

104 Cong. Rec. 7953	23
104 Cong. Rec. 10947	23, 25
104 Cong. Rec. 10999	26
104 Cong. Rec. 11487	27
104 Cong. Rec. 18288	27
105 Cong. Rec. 6745	29
105 Cong. Rec. 18116	30
Summers, <i>Judicial Regulation of Union Elections</i> , 70 Yale L.J. 1222	23

Miscellaneous—Continued

Hearings before a Subcommittee of the House Committee on Education and Labor, 86th Cong., 1st Sess.....	Page 30
Hearings Before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare, 86th Cong., 1st Session.....	28, 39
H.R. 8400.....	30
H. Rep. No. 1147, 86th Cong., 2d Sess.....	30
105 Cong. Rec. 17919.....	30
105 Cong. Rec. 18153.....	30
S. 505.....	27, 28, 29
S. 748.....	27, 28
S. 1555.....	29
S. 3751.....	23, 24
S. 3974.....	24, 26
S. Rep. No. 1684, 85th Cong. 2d Sess.....	24
S. Rep. No. 187, 86th Cong., 1st Sess.....	29